2004 BNH 011 **Note: This is an unreported opinion. Refer to AO 1050-1 regarding citation.**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

Robert F. Jackson,
Debtor

Bk. No. 03-10717-JMD
Chapter 7

Edmond J. Ford,
Chapter 7 Trustee,
Plaintiff

v.

Adv. No. 03-1334-JMD

Robert F. Jackson,
Defendant

Edmond J. Ford, Esq.
FORD & WEAVER, P.A.
Portsmouth, New Hampshire
Attorney for Plaintiff

Mary M. Howie, Esq.
Salem, New Hampshire
Attorney for Debtor/Defendant

MEMORANDUM OPINION

I. INTRODUCTION

Edmond J. Ford, Chapter 7 Trustee (the "Trustee"), brought an amended complaint against the Debtor seeking to deny the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(2)(B), (a)(3), and (a)(4)(A). The Court conducted a trial of this matter in April 2004. For the reasons set forth below, the Court denies the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(4)(A).

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

Sometime prior to February 27, 2003, the Debtor sought the advice of bankruptcy counsel[1] regarding the filing of a personal bankruptcy. At the time the Debtor was the sole stockholder of a company called A Bargain Company ("ABC"). During the course of their preliminary discussions, the attorney indicated to the Debtor that the Debtor's personal bankruptcy would be totally separate from any action that the Debtor wanted to take with regard to ABC.[2]

The Debtor's attorney asked the Debtor to complete a written questionnaire in order to facilitate his preparation of the Debtor's bankruptcy petition, statements, and schedules. Presumably, based upon the Debtor's answers, his attorney drafted those documents. The Debtor testified that he signed his bankruptcy petition, statements, and schedules on February 27, 2003, without carefully reviewing or reading them. The Debtor acknowledged at trial that he signed those documents under penalty of perjury. The documents were filed with the Court on March 6, 2003.

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[1] This attorney and his law firm no longer represent the Debtor in this adversary proceeding, the Debtor having obtained new counsel. However, this attorney and his law firm have not formally withdrawn as Debtor's counsel in the main bankruptcy case.

[2] The Debtor testified that ABC was struggling during this time as well.

The Debtor's statements and schedules contain numerous inaccuracies. The response to Question 1 on the Statement of Financial Affairs indicates that the Debtor had no income during the three years prior to filing bankruptcy. While the Debtor testified that he did not take a salary from ABC during this time period, he did draw money from the company to pay his personal expenses. The Debtor's tax returns for the years 2000, 2001, and 2002 reflect gross income totaling over $10,000.

The response to Question 18 on the Statement of Financial Affairs indicates that the Debtor did not have any involvement in any business in the six years prior to filing bankruptcy. At trial the Debtor admitted that his answer to Question 18 was incorrect as the Debtor was the owner and operator of ABC at the time he filed bankruptcy and had been since 1996.

Schedule B, item 12 required the Debtor to itemize his stock and interests in any incorporated or unincorporated business. The response to item 12 on Schedule B indicates that the Debtor held no stock or interest. This too was incorrect as the Debtor was the 100% owner of ABC at the time he signed his schedules.

Schedule G required the Debtor to list any executory contracts and unexpired leases to which he was party. Schedule G lists none despite the Debtor having recently signed a lease on February 1, 2003, of commercial property from which ABC planned to operate a used car dealership. Despite the Debtor's apparent intent to have ABC lease the premises, the Debtor signed the lease in his individual capacity.[3]

On Schedule I, the Debtor was required to list his occupation. Schedule I lists "painter" as the Debtor's occupation and ABC as his employer. At the time, the Debtor was also performing

[3] Upon renewal in 2004, the lease was placed in ABC's name.

snow plowing services for ABC. The Debtor testified at trial that he also performed property maintenance services on occasion as well.

The Debtor testified at trial that his lawyer was the one who actually filled out his bankruptcy statements and schedules and checked the boxes indicating "none" to the various questions. When asked several times at trial if he had read the documents prepared by his lawyer prior to signing them, the Debtor admitted that he did not read every line of his statements and schedules and that he probably did not read them thoroughly enough. The Debtor admitted that while he and his lawyer had discussed general strategy and the fact that the Debtor would be filing a personal bankruptcy, the Debtor never specifically asked his lawyer whether he should have listed ABC in response to any particular question on his statements and schedules, e.g., Question 18 on the Statement of Financial Affairs and Schedule B, item 12.

The Trustee conducted the first meeting of creditors in the Debtor's case on April 10, 2003. The Debtor attended the meeting not with his lawyer but with an associate from his lawyer's office. Prior to his meeting being called, the Debtor observed other debtors being questioned by the Trustee regarding whether they had any interest in any business. The Debtor testified that he asked the associate how he should respond to that question if asked and the associate responded that she did not know. When the Debtor's meeting was called, the Trustee asked the Debtor whether his statements and schedules were accurate, and the Debtor responded that they were. The Trustee also asked the Debtor whether he had listed all of his assets, and the Debtor responded that he had. The Trustee asked the Debtor whether he had any interest in any business, and the Debtor admitted that he owned ABC.

During the discussion of ABC's operations, the Debtor never disclosed that ABC also conducted a snow plowing business and property maintenance services in addition to its painting

business. Rather, the Debtor indicated only that the business was ready to fold, that it had serious debt, and that the Debtor had not painted anything between Christmas 2002, and April 10, 2003, the date of the first meeting of creditors. ABC's bank statements show, however, that ABC had total gross revenue of approximately $60,000 during the months of January, February, and March 2003. The Debtor testified at trial that during that period he was engaged in snow plowing and had subcontractors who were performing that work for him.

During the discussion regarding ABC, the Debtor also did not disclose at the first meeting of creditors that on February 26, 2003, the day before he signed his bankruptcy petition, statements, and schedules, ABC had applied for a used car dealership license, which it received on March 11, 2003, and that the Debtor planned to open a used car dealership in ABC's name at the commercial premises he had recently leased.

On May 21, 2003, shortly after the first meeting of creditors the Debtor amended Schedule B, item 12 to reflect that he owned stock in ABC worth $6,466. He did not amend the Statement of Financial Affairs to reflect his income for the prior three years or his interest in ABC nor Schedule G to list his lease of the commercial property nor Schedule I to show that he was employed not only in the painting business but also in the snow plowing and property maintenance businesses.

At trial the Trustee questioned the Debtor regarding money he withdrew from time to time from ABC's bank account. The Debtor admitted that he did not keep a ledger regarding his personal draws and expenses. While the Debtor first indicated that ABC's monthly bank statements would show whether money was withdrawn for personal or business expenses, he later admitted that the statements probably would not show such a distinction. The only way to determine whether any particular expense incurred by ABC was personal to the Debtor or was a legitimate business expense would require someone to review each individual check stub from

ABC's bank account. The Debtor further stated that ABC had no records that would show from what sources ABC generated its revenue, e.g., painting, snow plowing, property maintenance, or used car sales. The Debtor testified that he used the "shoebox method" of bookkeeping, i.e., he placed any records that he did maintain into a shoebox. The Debtor did not use a computer bookkeeping system to maintain any records.

III. DISCUSSION

The Trustee's amended complaint seeks to deny the Debtor a discharge pursuant to section 727(a)(2)(B), (a)(3), and (a)(4)(A), which provides:

> The court shall grant the debtor a discharge, unless–
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> . . .
>
> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed –
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> . . .
>
> (B) property of the estate, after the date of the filing of the petition;
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> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;
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> (4) the debtor, knowingly and fraudulently, in or in connection with the case –
>
> (A) made a false oath or account;
>
> . . . .

11 U.S.C. § 727(a)(2)(B), (a)(3) and (a)(4)(A).

"The statutory requirements for a discharge are 'construed liberally in favor of the debtor' and '[t]he reasons for denying a discharge to a bankrupt must be real and substantial, not merely technical and conjectural.'" Palmacci v. Umpierrez, 121 F.3d 781, 786 (1st Cir. 1997) (quoting Boroff v. Tully (In re Tully), 818 F.2d 106, 110 (1st Cir. 1987)). A debtor is entitled to a starting presumption that most debtors are honest and do not ordinarily engage in fraudulent activities. See Francis v. Riso (In re Riso), 74 B.R. 750, 756 (Bankr. D.N.H. 1987). The purpose of certain sections of the Bankruptcy Code, including section 727, is to make certain that those who seek the shelter of the Bankruptcy Code do not play fast and loose with their assets or with the reality of their affairs. See Palmacci, 121 F.3d at 786 (citing Tully, 818 F.2d at 110). "The statutes are designed to insure that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction." Tully, 818 F.3d at 110. When seeking denial of a debtor's discharge under section 727, the plaintiff has the burden of proof and must establish the elements by a preponderance of the evidence. See Rhode Island Depositors Econ. Prot. Corp. v. Hayes (In re Hayes), 229 B.R. 253, 259 n.7 (B.A.P. 1st Cir. 1999) (citing Gillickson v. Brown (In re Brown), 108 F.3d 1290, 1293 (10th Cir. 1997); Lansdowne v. Cox (In re Cox), 41 F.3d 1294, 1297 (9th Cir. 1994); Barclays/American Bus. Credit, Inc. v. Adams (In re Adams), 31 F.3d 389, 393-94 & n.1 (6th Cir. 1994); Montey Corp. v. Maletta (In re Maletta), 159 B.R. 108 (Bankr. D. Conn. 1993); and Grogan v. Garner, 498 U.S. 279, 289-91 (1991) (concluding that the appropriate standard of proof for a section 523(a) action is by a preponderance and suggesting that it is the same under section 727)); Riso, 74 B.R. at 756; Fed. R. Bankr. P. 4005.

A. Objection to Discharge under 11 U.S.C. § 727(a)(2)(B)

In Counts I and IV, the Trustee seeks to deny the Debtor a discharge pursuant to section 727(a)(2)(B) for concealing property of the estate after the filing of the bankruptcy petition with the intent to defraud an officer of the estate. The Trustee must prove four elements to establish his claim: (1) the Debtor concealed, (2) property of the estate, (3) after the bankruptcy filing, (4) with intent to hinder, delay, or defraud creditors or an officer of the estate. See Hayes, 229 B.R. at 259 (describing the analogous elements of a claim under section 727(a)(2)(A)). By omitting any reference to ABC in the Statement of Financial Affairs and Schedule B and by failing to disclose the Debtor's recent lease of commercial property in Schedule G, the Debtor effectively concealed the Debtor's interest in ABC and its operations from the Trustee and the Debtor's creditors. This concealment occurred at the time the Debtor filed his petition and continued through the date of the first meeting of creditors and beyond since the Debtor only disclosed his involvement in the used car business during the course of discovery in this adversary proceeding. Accordingly, the first three elements of section 727(a)(2)(B) have been met. The last element of the Trustee's claim is that the Debtor concealed his interest in ABC "with the intent to hinder, delay, or defraud a creditor or an officer of the estate."

In determining what a debtor actually believed or intended, the Court is not bound by the self-serving testimony of the debtor. See Riso, 74 B.R. at 757. Rather, the Court is permitted to test the debtor's asserted beliefs against the appropriate inferences to be drawn from all the surrounding objective factual circumstances. See id.; Commerce Bank & Trust Co. v. Burgess (In re Burgess), 955 F.2d 134, 137 (1st Cir. 1992) (stating that any determination concerning fraudulent intent depends largely upon an assessment of the credibility and demeanor of the debtor). In the instant case, the Debtor testified that his lawyer left him with the impression that he

did not need to disclose anything regarding ABC on his bankruptcy statements and schedules because the Debtor was filing a personal bankruptcy. The Debtor indicated that before his meeting of creditors, he was confused because he heard the Trustee questioning other individual debtors regarding business activities. He testified that he asked his lawyer's associate who accompanied him to the meeting how he should respond to such questioning and she was unable to offer him any assistance.

The Court finds the Debtor's testimony credible that he did not believe he had to disclose information regarding ABC on his bankruptcy statement and schedules and that he was confused at the first meeting of creditors as to whether and/or to what extent he needed to disclose his relationship with ABC to the Trustee. From the Debtor's testimony it appears that the Debtor's former attorney and his associate may not have provided him with adequate and competent representation or advice.[4] While the Court does not believe that counsels' actions provide a complete defense to the Debtor, it does preclude the Court from finding in this case that the Debtor acted with the requisite fraudulent intent. The Court does not condone the Debtor's omission of his interest in ABC from his schedules and his failure to disclose all aspects of its business operations at the first meeting of creditors, including the Debtor's recent lease of commercial property purportedly on ABC's behalf. Nonetheless the Court must find that the Trustee failed to establish the Debtor's fraudulent intent by a preponderance of the evidence. Accordingly, the Debtor's discharge will not be denied under section 727(a)(2)(B). Count I and Count IV, relating to section 727(a)(2)(B), must be denied.

[4] Whether the Debtor and/or the estate may have a claim against his former counsel arising from their prepetition and postpetition representation and advice, and what defenses they may have to any such claims, are not issues before the Court in this adversary proceeding.

B. Objection to Discharge under 11 U.S.C. § 727(a)(3)

In Count II, the Trustee seeks to deny the Debtor a discharge pursuant to section 727(a)(3) for concealing information, books, documents, records, and papers with respect to the financial affairs and business transactions of the Debtor relating to ABC in a manner that was not justified under all the circumstances of the case. To satisfy the requirements of section 727(a)(3) of the Bankruptcy Code, the Trustee must prove by a preponderance of the evidence that either:

1. The Debtor failed to keep or preserve recorded information, including books, documents, records, and papers, and that by failing to keep or preserve such books, documents, records, and papers, it is impossible to ascertain the financial condition and material business transactions of the Debtor; or

2. The Debtor destroyed, mutilated, falsified, or concealed recorded information, including books, documents, records, and papers, and that by destroying, mutilating, falsifying, or concealing such books, documents, records, and papers, it is impossible to ascertain the financial condition and material business transactions of the Debtor.

See 11 U.S.C. § 727(a)(3). The Trustee has not made any allegations that the Debtor "destroyed, mutilated, or falsified" any documents, records, or papers. Accordingly, he bases his cause of action on the fact that the Debtor concealed and/or failed to keep adequate written records of his business transactions.

When a debtor's right to discharge is challenged under section 727(a)(3), the trustee or objecting creditor has the initial burden to establish that the debtor's records are inadequate for determining the financial affairs or business transactions of the debtor. See McGowan v. Beausoleil (In re Beausoleil), 142 B.R. 31, 37 (Bankr. D.R.I. 1992); American Motors Leasing Corp. v. Morando (In re Morando), 116 B.R. 14, 15 (Bankr. D. Mass. 1990). Once the trustee or objecting creditor has met his initial burden, the burden shifts to the debtor to establish either that the debtor maintained adequate books and records from which his financial condition can be

ascertained or that the failure to keep adequate books and records was justified under the circumstances. See Beausoleil, 142 B.R. at 37; Morando, 116 B.R. at 15. "Whether a failure to keep records, total or partial, will be justified is a question of fact to be determined in each instance under the particular circumstances of the case. . . . In short, what is required is records that are 'reasonable under the circumstance.'" Harman v. Brown (In re Brown), 56 B.R. 63, 66 (Bankr. D.N.H. 1985). "It is sufficient if the books and records are kept, if required at all, so as to reflect with a fair degree of accuracy, the debtor's financial condition and in a manner appropriate to his business." Id. at 67. The Court has wide discretion in determining whether the books and records produced by debtors are sufficient to meet the requirements of section 727(a)(3). See id. at 66; Morando, 116 B.R. at 15. Doubts as to the adequacy of the records should be resolved in favor of the honest debtor. See Wortman v. Ridley (In re Ridley), 115 B.R. 731, 733 (Bankr. D. Mass. 1990).

> An individual debtor's failure to maintain books and records of a corporation is not in itself sufficient to deny that debtor a discharge under § 727(a)(3) because an objection to discharge must be based on the debtor's failure to produce books and records which depict the individual debtor's finances, not that of his or her corporation. . . . The corporation must be treated as an entity separate and distinct from the individual debtor. . . . That is not to say, however, that the books and records of a debtor's corporation are never relevant to ascertaining that individual debtor's financial status. In certain cases, a debtor may substitute the books and records of a corporation for his or her own if they accurately portray that debtor's finances.

Krohn v. Cromer (In re Cromer), 214 B.R. 86, 99 (Bankr. E.D.N.Y. 1997) (citing Phillips v. Nipper (In re Nipper), 186 B.R. 284, 289 (Bankr. M.D. Fla. 1995)). See also Marshall v. Kalantzis (In re Kalantzis), 2001 BNH 009, 8 (Section 727(a)(3) "requires the Debtor to keep books and records from which his financial condition can be met."), aff'd, Kalantzis v. Marshall (In re Kalantzis), BAP No. NH 01-033 (B.A.P. 1st Cir. Nov. 14, 2001); Blanchard v. Ross (In re

Ross), No. 97-19956DWS, 98-0246, 1999 WL 10019, at *4 (Bankr. E.D. Pa. 1999) ("[U]nder appropriate circumstances a debtor may be denied a discharge based on his failure to keep, maintain or preserve records belonging to a separate, but closely held corporate entity. The facts of each situation must be analyzed with the language and statutory purpose of § 727(a)(3) in mind.").

The Trustee alleges that the Debtor did not keep adequate records regarding his transactions with ABC and therefore it is impossible for the Trustee to accurately determine the Debtor's financial condition. It is undisputed that the Debtor did not receive a salary from ABC but rather withdrew money from ABC's bank accounts as needed for his personal expenses. It is also undisputed that as sole operator of ABC the Debtor did not keep any records from which the Trustee could readily determine ABC's financial status, how much income the Debtor had received from ABC in the period prior to the Debtor's bankruptcy filing, and the value of the company to the Debtor and thus to the bankruptcy estate. The Debtor admitted that the only records he kept were ABC's bank statements, check stubs, and a box of receipts that he handed to his accountant at tax time.

However, the evidentiary record reflects that the Debtor's accountant did obtain sufficient records and information from the Debtor to prepare the 2000, 2001 and 2002 U.S. Individual Income Tax Returns, Form 1040, for the Debtor and the 2000, 2001 and 2002 U.S. Corporation Income Tax Returns, Form 1120, for ABC. Although the Debtor's records may not have been maintained properly and the Debtor himself could not explain or understand his records, his accountant was able to take what records existed and produce federal tax forms, which disclosed the financial condition and operation of ABC for the three years preceding the petition date and the Debtor's income from ABC. The Trustee has not offered any explanation or authority as to why

such records are not sufficient for purposes of section 727(a)(3). Accordingly, the Court finds that the Trustee has not established that the Debtor failed to maintain records sufficient to determine the Debtor's financial condition as it relates to his ownership and operation of ABC. Count II of the amended complaint shall be denied.

C. Objection to Discharge under 11 U.S.C. § 727(a)(4)(A)

In Counts III and IV, the Trustee seeks to deny the Debtor a discharge pursuant to section 727(a)(4)(A) because the Debtor knowingly and fraudulently, in connection with his bankruptcy case, made false oaths or accounts by failing to disclose (1) his income in Question 1 on the Statement of Financial Affairs; (2) his interest in ABC in Question 18 on the Statement of Financial Affairs; (3) his stock in ABC on Schedule B, item 12; (4) his lease of commercial property on Schedule G; (5) the license recently obtained by ABC for operating a used car dealership during the first meeting of creditors; and (6) the actual and proposed business operations of ABC during the first meeting of creditors.

To meet his burden under section 727(a)(4)(A) of the Bankruptcy Code, the Trustee must prove by a preponderance of the evidence that (1) the Debtor knowingly and fraudulently made a false oath, (2) relating to a material fact in connection with the case. See, e.g., Desmond v. Varrasso (In re Varrasso), 37 F.3d 760, 764 (1st Cir. 1994); Tully, 818 F.2d at 110; Smith v. Grondin (In re Grondin), 232 B.R. 274, 276 (B.A.P. 1st Cir. 1999). A discharge should not be denied under section 727(a)(4)(A) if the false statement or omission is due to mistake or inadvertence or if the mistake is technical and not real. See Gordon v. Mukerjee (In re Mukerjee), 98 B.R. 627, 629 (Bankr. D.N.H. 1989).

A debtor's schedules and statement of financial affairs are unsworn declarations made under penalty of perjury and are the equivalent of a verification under oath. See Grondin, 327

B.R. at 276. In the instant case, it is undisputed that the Debtor made false statements in his statement of financial affairs and schedules and at the first meeting of creditors where he testified under oath. The Debtor failed to list his income and failed to list his interest in ABC as well as the lease of commercial property on his statement of financial affairs and schedules. When questioned about ABC's operations at the first meeting of creditors, the Debtor indicated that it provided painting services and was ready to fold. He never informed the Trustee that he had just spent three months providing snow plowing services, that in the past he had performed property maintenance services, or that he was starting a new venture in the used car business for which the Debtor had recently leased property and obtained a used car dealer license for ABC.

The issues before the Court then are whether such omissions and false statements are material and whether the Debtor acted knowingly and fraudulently. "A trivial matter which has but little effect upon the estate and the creditors is treated as immaterial." In re Irving, 27 B.R. 943, 945 (Bankr. E.D.N.Y. 1983) (quoted in Mukerjee, 98 B.R. at 629). A fact is material when it bears a relationship to the debtor's business transactions or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property. See Grondin, 327 B.R. at 276 (citing Tully, 818 F.2d at 110-11). The Court has previously indicated that whether or not a debtor is the owner of the controlling shares of a corporation is a material fact. Kalantzis, 2001 BNH 009, 11.

The Court finds that the Debtor's statements and omissions, both in writing and at the first meeting of creditors, constitute material false statements because they left the Trustee and creditors with a mis-impression regarding the financial status, business and prospects of ABC and, thereby, the value of the Debtor's interest in ABC. While failure to disclose the used car dealer license or even the lease in the Debtor's name, rather than ABC's name, may not in and of themselves have

been material, when combined with the Debtor's other statements and omissions regarding his ownership of the business, the extent of its operations, and its future prospects, they prevented the Trustee, and therefore the Debtor's creditors, from discovering the true value of the Debtor's interest in ABC and his income.[5]

With respect to whether the Debtor acted knowingly and fraudulently, the Court has previously stated that, "[a]n isolated error or omission in a bankruptcy schedule, or mere inconsistent entries where one entry is correct and another entry or omission is erroneous, generally reflect inadvertent errors that occasionally occur in the haste of filing a bankruptcy petition." Kalantzis, 2001 BNH 009, 10. However, "a consistent pattern of errors and omissions reflects either a knowing and fraudulent false oath or a reckless indifference to the truth." Id. at 11. A reckless disregard for the accuracy of bankruptcy schedules and the statement of financial affairs has been held to be the equivalent of fraud. See Tully, 818 F.2d at 112; Grondin, 232 B.R. at 277-78; LaVangie v. Mazzola (In re Mazzola), 4 B.R. 179, 183 (Bankr. D. Mass. 1980) ("A reckless disregard of both the serious nature of the information sought and the necessary attention to detail and accuracy in answering may rise to the level of fraudulent intent necessary to bar a discharge.").

The Debtor admitted at trial that he did not carefully review or read his bankruptcy petition, statements, and schedules before signing them under penalty of perjury. He stated his lawyer handed them to him and he signed them, assuming that they had been prepared correctly.

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[5] Subsequent to the first meeting of creditors, the Debtor amended his schedules to include his ownership interest in ABC at the book value of its assets or $6,466 which he testified was established by his accountant. The schedules, as amended, are an admission of the value of the Debtor's interest in ABC on the petition date and the date of the first meeting of creditors, rendering his statements and omissions regarding ABC material to the assets in his estate.

He indicated at trial that perhaps he had trusted his attorney "too much." The Court finds that the Debtor's actions demonstrate a reckless disregard for the accuracy of his bankruptcy statements and schedules and rise to the level of fraud necessary to bar the Debtor a discharge under section 727(a)(4)(A). A debtor's failure to make the necessary disclosures about his business affairs impairs the administration of the debtor's estate and cannot be condoned. Kalantzis, 2001 BNH 009, 11 (citing Tully, 818 F.2d at 112 ("The law, fairly read, does not countenance a petitioner's decision to play a recalcitrant game, one where the debtor hides and the trustee is forced to go seek."); Grondin, 232 B.R. at 279 ("A debtor's failure to make necessary disclosures impairs the '[t]rustee's ability to perform his statutorily imposed obligations . . . and . . . cannot be [condoned].'") (quoting Sullivan v. Tracey (In re Tracey), 76 B.R. 876, 881 (Bankr. D. Mass. 1987)). This is not a case where, in connection with the careful completion or review of the schedules and statement of financial affairs, a typical debtor or an attorney might not have thought about the omitted information regarding the Debtor's company.[6] This is a case where the misleading statements and omissions are matters about which a typical debtor who carefully reviewed his schedules and statement of financial affairs should have questioned the accuracy of the responses on the forms he was about to sign under penalty of perjury and file in a federal bankruptcy court.

The Bankruptcy Code does not require a trustee or a debtor's creditors to conduct an exhaustive investigation into the debtor's affairs. Rather, the debtor has the obligation to place his financial affairs before them by filing a complete and accurate petition, statements, and schedules

[6] This is distinguishable, for example, from a case where a debtor might omit from her schedules the debtor's right under a power of attorney to dispose of the assets of a spouse living apart from the debtor. See Marshall v. Wilson (In re Wilson), 2002 BNH 019, 16-17.

with the Court. See Tully, 818 F.2d at 111 ("A petitioner cannot omit items from his schedules, force the trustee and the creditors, at their peril, to guess that he has done so–and hold them to a mythical requirement that they search through a paperwork jungle in the hope of finding an overlooked needle in a documentary haystack."). "Sworn statements filed in any court must be regarded as serious business. In bankruptcy administration, the system will collapse if debtors are not forthcoming." Id. at 112. Because the Court finds that the Debtor was not forthcoming, his discharge must be denied under section 727(a)(4)(A) for knowingly and fraudulently making false oaths in connection with his bankruptcy case. The Trustee's claims under Counts III and IV, relating to section 727(a)(4)(A), must be granted.

IV. CONCLUSION

For the reasons outlined above, the Court denies the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(4)(A). This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate judgment consistent with this opinion.

ENTERED at Manchester, New Hampshire.

Date: April 26, 2004

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge